

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VNUS MEDICAL TECHNOLOGIES, INC.

No. C-05-2972 MMC

Plaintiff

v.

DIOMED HOLDINGS, INC., et al.,

Defendants

**ORDER GRANTING IN PART, DENYING
IN PART, AND DEFERRING IN PART
RULING ON PLAINTIFF'S MOTION FOR
ADMINISTRATIVE RELIEF TO FILE
DOCUMENTS UNDER SEAL;
DIRECTIONS TO PLAINTIFF;
DIRECTIONS TO DIOMED; DIRECTIONS
TO ANGIODYNAMICS**

Before the Court is plaintiff VNUS Medical Technologies, Inc.'s ("VNUS") motion for administrative relief to file documents under seal, filed August 10, 2007. Having reviewed the Declaration of David B. Swank on behalf of defendants Diomed Holdings, Inc., and Diomed, Inc. (collectively, "Diomed") filed August 17, 2007, and the Declaration of Richard J. Twilley filed on behalf of defendant AngioDynamics, Inc. ("AngioDynamics") filed August 17, 2007,¹ the Court rules as follows:

¹AngioDynamics did not provide the Court with a chambers copy of the Declaration of Richard J. Twilley. For future reference, AngioDynamics is reminded of the following provision in the Court's Standing Orders: "In all cases that have been assigned to the Electronic Case Filing Program, the parties are required to provide for use in chambers one paper copy of each document that is filed electronically. The paper copy of each such document shall be delivered no later than noon on the day after the document is filed electronically. The paper copy shall be marked 'Chambers Copy' and shall be delivered to the Clerk's Office in an envelope clearly marked with the judge's name, case number, and 'E-Filing Chambers Copy.'"

1 1. VNUS's motion is hereby GRANTED in part, specifically, as to the following
2 documents that Diomed or AngioDynamics has shown contain material properly filed under
3 seal:

4 a. Plaintiff VNUS Medical Technologies, Inc.'s Notice of Motion and
5 Memorandum of Points and Authorities in Support of its Motion for Summary Judgment on
6 Patent Infringement;

7 b. Declaration of Howard P. Greisler, M.D. in Support of VNUS Medical
8 Technologies, Inc.'s Motion for Summary Judgment; and

9 c. Declaration of Suong T. Nguyen in Support of VNUS Medical
10 Technologies, Inc.'s Motion for Summary Judgment.

11 2. With respect to VNUS's Notice and Motion and Memorandum of Points and
12 Authorities in Support of its Motion for Summary Judgment on Patent Infringement, only the
13 redacted portion of page 24 thereof is, for the reasons stated by Diomed, properly filed
14 under seal. Accordingly, VNUS's motion is hereby DENIED to the extent VNUS seeks to
15 file other portions of said document under seal. If VNUS wishes the Court to consider the
16 entirety of its memorandum, VNUS is hereby DIRECTED to electronically file in the public
17 record all pages of said document, other than the redacted portion of page 24, no later than
18 August 30, 2007.

19 3. With respect to the Declaration of Howard P. Greisler, only the redacted portion
20 of page 6 thereof is, for the reasons stated by Diomed, properly filed under seal.
21 Accordingly, VNUS's motion is hereby DENIED to the extent VNUS seeks to file other
22 portions of said declaration under seal. If VNUS wishes the Court to consider the entirety
23 of the Declaration of Howard P. Greisler, VNUS is hereby DIRECTED to electronically file
24 in the public record all pages of the declaration, other than the redacted portion of page 6,
25 no later than August 30, 2007.

26 4. With respect to the Declaration of Suong T. Nguyen, no party has asserted, let
27 alone shown, that Exhibits 4, 16, 17, 19, 20, 24, 26, 28, 29, 32, 53, 56, 58, or 59 are
28 properly filed under seal. Accordingly, VNUS's motion is hereby DENIED to the extent

1 VNUS seeks to file said exhibits under seal. If VNUS wishes the Court to consider said
2 exhibits, VNUS is hereby DIRECTED to electronically file them in the public record no later
3 than August 30, 2007.

4 5. With respect to Exhibits 42 and 45 to the Declaration of Suong T. Nguyen,
5 Diomed asserts that said exhibits (respectively, a 15-page excerpt from a deposition and a
6 110-page expert report) "contain" information Diomed believes to be properly filed under
7 seal. (See Swank Decl. ¶ 4.) Diomed fails to identify the portions it asserts contain
8 sealable material, and substantial portions thereof are plainly not properly filed under seal.
9 (See, e.g., Nguyen Decl. Ex. 45 at 2-5 (setting forth expert's qualifications).)² "A sealing
10 order may issue only upon a request that establishes that the document, or portions
11 thereof, is privileged or protectable as a trade secret or otherwise entitled to protection
12 under the law." Civil L.R. 79-5(a). "The request must be narrowly tailored to seek sealing
13 only of sealable material." Id. Rather than directing VNUS to file Exhibits 42 and 45 in the
14 public record, however, the Court hereby DEFERS ruling on VNUS's motion as it pertains
15 to Exhibits 42 and 45 in order to afford Diomed the opportunity to file, no later than August
16 30, 2007, a supplemental declaration to identify, with specificity, the portions of Exhibits 42
17 and 45 that assertedly are privileged, protectable as a trade secret, or otherwise entitled to
18 be filed under seal.

19 6. With respect to Exhibit 39 to the Declaration of Suong T. Nguyen,
20 AngioDynamics asserts that said exhibit, specifically, a 32-page memorandum of points
21 and authorities filed in another action, "contains" information AngioDynamics believes to be
22 properly filed under seal. (See Twilley Decl. ¶ 6.) AngioDynamics fails to identify the
23 portions it asserts contain sealable material, and substantial portions thereof clearly are not
24 properly filed under seal. (See, e.g., Nguyen Decl. Ex. 39 at 3 (discussing drawbacks of
25 "traditional treatments of varicose veins"); id. at 19 (citing cases setting forth evidence

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28 ²This example is intended to be illustrative only.

1 required to prove claim of inducement).³ For the reasons stated above with respect to
2 Exhibits 42 and 45, the Court hereby DEFERS ruling on VNUS's motion as it pertains to
3 Exhibit 39, in order to afford AngioDynamics the opportunity to file, no later than August 30,
4 2007, a supplemental declaration to identify, with specificity, the portions of Exhibit 39 that
5 assertedly are privileged, protectable as a trade secret, or otherwise entitled to be filed
6 under seal.

7 **IT IS SO ORDERED.**

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9 Dated: August 23, 2007


MAXINE M. CHESNEY
United States District Judge

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³These examples are intended to be illustrative only.